

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A.No.157 of 2020 in
C.P.(IB)No.92/BB/2018
U/s 12(3) of the IBC, 2016 &
R/w Rule 11 of the NCLT Rules, 2016

Shankar B. Iyer

*Resolution Professional of
M/s.Gruha Kalyan Housing
Projects Pvt. Ltd.
C203, Shriram Samrudhi,
Varthur Main Road,
Kundanahalli Gate,
Bangalore – 560 066.*

- Applicant/
Resolution Professional

Date of Order: 20th March, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

The Applicant/RP : Shri Shankar B. Iyer

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.157 of 2020 in C.P.(IB)No.92/BB/2018 is filed by Shankar B. Iyer, Resolution Professional of M/s.Gruha Kalyan Housing Projects Pvt. Ltd. (hereinafter referred to as 'Applicant/Resolution Professional') U/s 12, Sub-Section 3, Proviso 2 of the IBC, 2016 & R/w Rule 11 of the NCLT Rules, 2016, by inter alia seeking to exclude period of 60 days on account of legal proceedings in the Resolution Process and suitable extend the CIRP completion date, to 21st May 2020 to enable Resolution to meet ends of justice and equity for Home Buyers
2. Brief facts of the case, as mentioned in the Application, which are relevant to issue in the question, are as follows:



- (1) The main Company Petition bearing C.P.(IB)No.92/BB/2018 filed by Mr. P. Pradeep Kumar & Others, under Section 7 of the IBC, 2016, R/w Rule 4 of the I&B (AAA) Rules, 2016, was admitted by this Adjudicating Authority, vide order dated June 27th, 2019 by initiating CIRP, appointing Ms. Medha Kulkarni as the IRP, imposing moratorium etc. Subsequently, the Adjudicating Authority, vide its order dated September 11th, 2019 passed in IA No. 427 of 19 appointed the Applicant as RP and Viswanathan Shankaran as Authorised Representative for class Home Buyers. Subsequently, by an order dated 3rd January, 2020, passed in I.A.No.684 of 2019, has extended further period of 90 days from 23.12.2019.
- (2) It is stated that the Applicant had written a letter dated October 3rd 2019 to the Under Secretary, Government of Karnataka, by interalia requesting him to communicate to Assistant Commissioner(AC), Bangalore, South and Special Court to hand over title deeds/property document/other assets of Gru Kalyan in their custody to him. After the considering the case, the Govt of Karnataka has rejected the case of Applicant by interalia stating that they have taken action against Gruhakalyan Pvt. Ltd and other fraudulent Companies viz Dreams infra Pvt Ltd. TGS Constructions Ltd by freezing both liquid and real estate properties of the Companies under KPID Act, 2004 vide Govt. Gazette notification//RD 17/GRC 2017 dated 20.06.2019. Accordingly, appointed AC Bangalore South as the competent Authority to initiate action as per the KPID Act, 2004. It was also mentioned that the provisions of KPID Act, 2004 prevails/overrides other laws.
- (3) The status of Resolution of Assets and Liabilities of the Corporate Debtor is given hereunder:



Estimated Value of Properties	Rs.10-15 Cr. (out of total around 30 projects for which home buyers have paid advance, the Corporate Debtor has executed the Sale Deed in only 2 projects and in the balance 28 projects, he has paid advance to the land owners ranging from around 5% to 80%)
Status	Need to take possession. Efforts maximum here through frequent follow ups. Expect positive response to Ltr. dated 3 rd March citing Supreme Court Judgement
Financial Claim made on Group Company Dreamz Infra India Ltd.	Rs.18.92 Cr. (Excluding Interest)
Status	Dreamz Resolution Professional has rejected the claim on 3 grounds of being in cash, statement of Directors before police not admissible in evidence and transactions being in 2016 and 2017. The Resolution Professional plan to produce the Employees of the CD as witnesses. Pursue for Group Resolution.
Advances paid to Land owners	Rs.19.37 Cr.
Status	Follow up in progress – 4 Land owners Aretraced and have confirmed to repay Advance amounts which is totalling to Rs.2 Crores. They



	are confident of contacting the other Land owners
Total Assets	Rs.48.29 – 53.29 Cr.
Total Liabilities	--
Claims received from Homebuyers	Rs.23.35 Cr. from 293 Homebuyers
Claims made through other legislation (District Consumer Courts, National Consumer Dispute Redressal Commission)	Expected claims, Rs.40 Cr.

(4) The time lost in legal proceeding with the Department of Revenue, Government of Karnataka, and the Assistant Commissioner Bengaluru South is as under:

Notice issued by the Hon'ble BLR Bench to Principal Secretary to Government, Rev. and Assistant Commissioner, Bengaluru on 9 th December 2019 to date of Reply 31 st Dec. 2019.	Time lost – 22 Days
Reply from State Government, Revenue Dept. stating KPID overrules all other Acts time Lost in legal process from 31 st December 2019 to date	Time lost – 71 days
Insolvency Commencement date	27 th June 2019
Completion of 180 days	23 rd December 2019
Extension granted of 90 days, 270 th day	22 nd March 2020
Completion date of 330 days including time lost in legal proceedings	21 st May 2020



- (5) It is also stated that in the 3rd Meeting of CoC held on 7th March 2020, voted in favour of extending CIRP period of 60 days to May 21st 2020 by 99.6% of the voting shares. There is lot of work done in respect of the 3 (three) Principal Assets of the Corporate Debtor i.e. the Properties, Diversion of Funds to Dreams and Advance Recovery from Land owners. The Resolution Professional is confident of completing the work in 1 to 1.5 months at the end of which, he can invite Expression of Interest for a Resolution Plan and to enable this the Resolution Professional need the Adjudicating Authority to consider the Time lost towards legal proceedings with the State Government, Revenue Department of 60 days.
3. Heard Shri Shankar B. Iyer, the Resolution Professional. We have carefully perused the pleadings of the party and the extant provisions of the Code, and the Rules made thereunder.
4. It is relevant to point out here that initially P.Pradeep Kumar and 6 others, have filed the Company Petition by inter alia seeking to initiate CIRP against the Corporate Debtor. Since the Petitioners could not serve notice on the Corporate Debtor, as ordered by the Adjudicating Authority, they have taken paper publication in New India Express and in Kannada Prabha about the pendency of the case. Even then, no body appears before the Adjudicating Authority and thus case was admitted by an order dated 27th June, 2019 by initiating CIRP. By reading of the Company Petition, it is noticed that petitioners have not disclosed material facts about the status of Corporate Debtor, with reference to the action taken by the State Govt under KPID Act, as stated supra. They have only stated that one of Petitioners, namely S.Venkaesh, has lodged Complaint with Police Inspector, Madhiwarla PS, Bangalore, against the Company, which was stated to be


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registered as Cr. No. 929 of 2016, U/s 420 of IPC. It is general principle of law that every order of a Court/Tribunal would have prospect effect, unless contrary mentions by concerned Court. In the instant case, admission of the case is 27th June, 2019. It would be normal course of administrative action, that Authorities would initiate action, only after making through enquiry/investigation into the matter. However, the Applicant herein, as well as Petitioners, have not disclosed investigation conducted by the State Govt. before freezing both liquid and real estate properties of fraudulent Companies, which includes the Corporate Debtor as mentioned in the Govt. letter dated 31.12.2019.

5. As stated supra, total time permissible under Code viz 180+90 days, was going to expire on 22nd March, 2019. The record shows that there is no substantial work done in the CIRP process in the case except filing one Application or the other seeking various reliefs from the Adjudicating Authority. There are hardly realisable assets standing in the name of Corporate Debtor. And the Contention of Applicant that he would take appropriate action, if 60 days further time is granted is without any basis, and permissible 270 days have already been exhausted without doing any substantial work in CIRP. The Applicant has not furnished any material to show as to how State Government freezes the Property of Corporate Debtor, and what enquiry/investigation was conducted before etc. He cannot threaten the Officials of State Govt with Contempt, without citing any substantial material, as they are also discharging their statutory duties under Law. There would be no useful purpose to grant further time as asked for. The instant Application is totally misconceived, and the grounds mentioned in the application are baseless, and untenable, and they are liable to be rejected.
6. In terms of Section 33 of Code, if no Resolution Plan is received within stipulated period as per law, under sub-section (6) of Section 30 or



reject Resolution Plan, the Corporate Debtor has to be liquidated as per extant provisions of Code. Therefore, it is necessary to pass an order placing Corporate Debtor under Liquidation. In order to pass an order of Liquidation, it is necessary to appoint Liquidator. Therefore, the COC & AR are directed to suggest suitable Liquidator to appoint.

7. In the result, I.A.No.157 of 2020 in C.P.(IB)No.92/BB/2018 is hereby rejected. The COC and AR are directed file necessary Application, immediately, by suggesting qualified Liquidator for appointment.

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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